84-1849

No.

Office-Supreme Court, U.S.
FILED
MAY 25 1985
ALEXANDER L. STEVAS,
CLERK

In The

Supreme Court of the United States

October Term, 1985

ROBERT W. KEARNS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

---

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75pp

QUESTIONS PRESENTED

1. Is a patent a contract?
2. When is the constitutional command to "secure" met?
3. How is the inventor's consideration effected by the judicial process?
4. Is the U.S. of A. itself subject to the constitutional standard of consideration due to the inventor?
5. What standard of validity does an inventor need to establish for an entry of an injunction?
6. Since an inventor's common law right to practice his invention in secret cannot be restored after the issuance of his patent, how harmed is he by the court's entertainment of a post-issue-date challenge to the validity of his patent?

7. Did not the Court of Appeals for the Federal Circuit err in affirming the dismissal of Kearns' complaint by the Claims Court?

Petitioner Robert W. Kearns, an individual, has no corporate affiliations.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

No.

ROBERT W. KEARNS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Federal Circuit in its cause No. 85-645. The judgment was entered on April 26, 1985.

OPINIONS BELOW

The opinion of the Court of Appeals has not yet been officially reported; it is repro-

for injunctive relief in a patent case, citing *Mayview Corp. v. Rodstein*, 480 F.2d 714 (9th Cir. 1973); *Eli Lilly and Company, Inc. v. Generix Drug Sales, Inc.*, 460 F.2d 1096 (5th Cir. 1972) among others.

More will be said in section F. about how the U.S. of A. actually rewards infringers for not acquiescing to patents. But it can now be seen that delay of adjudication serves to extend the bar to injunctive relief --- delay through the routine expiration date of the patent being the prime goal.

Judge Pratt in his order of January 10,1980 recognized that Kearns would be damaged if the patents were to expire prior to a decision finding them valid and infringed and stated the action would be completed before the expiration date, writing:

> "It is true that if plaintiff's patent were to expire prior to a decision finding the patent valid and infringed, the plaintiff's anticipated position as a major supplier of the windshield wiper systems would be under

mined. The short answer to this contention is that this action will be completed before the expiration date of plaintiff's patent. The court would therefore be able to enjoin the infringement of this patent if plaintiff is successful on the merits and plaintiff would be allowed the marketing foothold he fears would otherwise be lost."

(2) Kearns' Frustrating Journey To --- Not Even a Final Pre-Trial Conference.

Kearns' litigating attorney, having been barred an injunction, petitioned the Court to set a final pre-trial conference and requested the action be placed on the trial calendar on October 10, 1980, four years and one month prior to the routine expiration date of Kearns' patents.

On December 8, 1980, just two months later, Kearns' litigating attorney filed a motion to withdraw as attorney of record for Kearns. Ford had accused him of fraud in the patent office and under the Code of Ethics he felt obliged to withdraw. This litigating attorney has continued to serve Kearns in his patent

causes to the present time. But Kearns had to educate a new litigating attorney.

Kearns' new litigating attorney made a Motion for Summary Judgment on September 21, 1983.

Two days later, Judge Pratt entered a Preliminary Pre-Trial Order which contained a schedule for a final pre-trial conference for August 2, 1984 at 2 p.m. Thus, the final pre-trial was scheduled three months before the routine expiration date of Kearns' patents. Kearns felt Judge Pratt could still make good on his promise.

Kearns felt his new litigating attorney's education was complete when he wrote to SWF's attorney on May 14, 1984:

> "I stand ready, as I have in the past, to work out a schedule to finish discovery. The difficulty is, as you have stated on the record many times, that you have no desire to proceed with the case, and are shamelessly using the alleged discovery disputes as a means of delaying your client's day of reckoning before a jury."

On June 7, 1984, only five months before the routine expiration date of Kearns' patents Judge Pratt entered an Order of Reference to Magistrate and cancelled the scheduled final pre-trial conference.

At a status conference on July 5, 1984, Judge Pratt set October 2, 1984 to be just another regular status conference, dashing Kearns' hopes. That was just 35 days before the routine expiration date of Kearns' patents.

Kearns filed his complaint with the U.S. Claims Court on August 23, 1984.

No final pre-trial conference was ever held before Kearns' routine expiration date. No final pre-trial conference has been held up to the submission of this petition.

F. Kearns' Complaint, Correspondence, Meeting and Sharing of a Television Program with the Commissioner of Patents and Trademarks.

In 1965, when Kearns attended a cocktail party he had to explain to the other guests what intermittent wipe was. No one seemed to

understand what was driving him. He was a missionary. As the years went by he felt good when he pulled up to a red light and he could see the drivers of the cars around him using their intermittent wiper controls when a light rain was falling. He had confidence in his attorneys, he had confidence in the judicial system. Week-ends he would drive around inside industrial parks admiring the manicured lawns around light manufacturing plants. He had read that any Ph.D. "worth his salt" would hire 120 persons. He had worked in such plants in Detroit when it was the "Arsenal of Democracy". He has served his country in the O.S.S. (Office of Strategic Services) --- had later joined the Marines and completed O.C.S. He dreamed of hiring his "neighbors".

As time went by, he no longer had to tell the other guests what intermittent wipe was. "So you're the guy who did it! How many do you produce each year?"

Gradually Kearns' satisfaction turned to anger. He heard himself tell a reporter, "You know, I've never owned a car that came with intermittent wipe --- all my money goes to pay lawyers."

His education began when Ford's litigating attorney said, "You know, there's no such thing as a valid patent". SWF's attorney offered him $1,500 per year for a license. By then $350 *thousand* had been spent in developing controls and obtaining patents. In some of Kearns' models the dwell time varied inversely with the number of raindrops on the windshield. The control did not use a moisture sensor. Kearns couldn't believe he was devoting his life to a one-transistor circuit.

Kearns was hurting. Some in his family of six children began to liken him to a drug addict. They felt he was too intelligent (I.Q. of 153) --- too creative (he managed 460 persons including 22 professional engineers)

--- was appointed by two of Michigan's governors to special study commissions --- to be mired down in the legal arena. He experienced:

> that when the validity of his patents were challenged loans for manufacturing and marketing operations were inhibited;
>
> he had to meet expensive legal costs or *lose his patents by default*;
>
> the production lines of infringer/pirates continue to run until the validity is once adjudicated;
>
> the infringer'pirates can pay their legal costs out of the profits from these assembly lines while Kearns must earn money to pay his legal costs and feed his family by other than his chosen career;
>
> the U.S. of A. rewards the infringer/pirates for exascerbating the delays of the judicial system; for denying Kearns a purchase order and shutting him out of the market because then, under the law, Kearns is relegated to a "reasonable royalty" and they reap said "unusual profits" promulgated by Congress minus said reasonable royalty. *Milgo Electronics Corp. v. United Business Communications, Inc.*, 623 F.2d 645 (10th Cir. 1980);
>
> was strongly advised by the Chief Counsel against access to the International Trade Commission legal arena, to stop the importation of infringing foreign produced products, because the commission recognizes

the American infringer'pirates activities, an *illegally* operating business, as being *efficiently and economically operated* and having *established such an industry* under section 341 which is an amendment to section 337 of the Tariff Act of 1930 (Pub. Law 93-618, 88 Stat. 2053);

the profits of the infringer/pirates are enhanced, or their prices are lower, because they are free from the inventor's development costs;

the U.S. of A. uses Kearns' tax money to write laws which eliminate the inventor from supplying his invention to the U.S. of A., *even when he is fully competitive*, because by law the U.S. of A. must buy from the lowest bidder and the inventor can't recover his development costs when competing with infringer/pirates;

the U.S. of A. uses Kearns' tax money to write laws which substitute a remedy available only through litigation for the inventors constitutional standard right to exclude others from making, using and selling his patented item 28 U.S.C. 1498, Article 1, Section 8, Clauses 8 & 18 of the Constitution);

the U.S. of A. uses Kearns' tax money to guarantee the loan of those who copy and infringe Kearns' patents (the "new" Chrysler Corporation);

the trials of patent challenges are given no precedence even though the Court recognizes, "To await litigation is - for all practical purposes - to debilitate the

patent system.". *Graham v. John Deere Co.* 383 U.S. 1, 18 (1965);

whether the public "wins" or "loses" the validity challenge, the public "wins" since it's consideration is preserved through the publication of the inventor's work, while, even when the inventor ultimately "wins" the challenge, the inventor actually "loses", since his consideration of "exclusive right" is lost from the time the validity is challenged until re-affirmed;

instead of applying his full energy to developing his own career, Kearns' eldest son, Dennis, devotes his life to aiding his father in the patent cause;

after three years of pressure from the litigation Kearns' wife of twenty seven years separated from him;

while the U.S. of A. intended a patent to be "the reward stipulated for the advantages derived by the public for the exertions of the individual, and is intended to be a stimulus to those exertions". *Grant v. Raymond*, 31 U.S. 218 or 6 Peters 94, at 97-98 (1832) Kearns found punishment and pain.

Kearns wanted to understand what he was experiencing --- and why. He had read only the patent office publications*prior to entering

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General Information Concerning Patents, U.S. Government Printing Office 1974 0-550-030; 1983 0-403-316; QL 3.

the patent contract. He read and believed what was written there, namely:

(a) A patent for an invention is a grant by the government to an inventor of certain rights,

(b) The duration of the patent grant is 17 years,

and (c) The right conferred by the patent grant is, in the language of the statute and of the grant itself, "the right to exclude others from making, using or selling" the invention".

Why shouldn't he have believed the publication? Why shouldn't he have planned to hire said 120 persons, through manufacturing his patented products for Kearns could manufacture his patented controls without infringing the patents of others?

But instead of hiring others, Kearns began to read patent law textbooks. He spent hours - days - in the law library. One day he happened across:

> "... the issuance of letters patent is merely prima facie evidence of patentability, and final determination of

> patentability must await adjudication of court in which patentability is properly challenged." *Quaker State Oil Refining Co. v. Talbot*, 185A 526, 322 Pa. 155.

Later he was to recognize that he was irreparably harmed by this post-contract entertainment of the challenge to the validity of his patents. Before entering into the patent contract Kearns' invention was kept confidential by the U.S. of A. 35 U.S.C. § 122 and Kearns had the common law right to break off negotiations with the patent office personnel and could exercise his common law right to practice his invention in secret. But once the U.S. of A. did not presume his patents to be valid in spite of 35 U.S.C. § 282 and reniged on its consideration to "secure" for him, not a favor, but a constitutionally mandated right, he was caught like a drug addict --- perhaps worse. He had to divert his time and financial resources from inventing (remember the purpose of the constitutional mandate is to "promote science

and the useful arts") to the legal arena where he *had* to defend the patents-*or lose them by default*-repeatedly and forever. *Illinois Tool Works v. Foster Grant Co.*, 547 F.2d 1300, 1303, 192 U.S.P.Q. 365, 367 (7th Cir. 1976) or lose what was to have been "secured" for him by default. Kearns was irreparably harmed because the U.S. of A.could not and did not concurrently restore his common law right to practice his invention in secret.

Kearns read that a patent was invalidated if a patent was found anywhere in the world which existed one year before the patent was applied for and contained a description of the invention. 35 U.S.C. § 102(a). In the U.S. alone, there are 20,000 new books published annually, 3900 magazines published monthly and 1840 newspapers published daily. In short, there is a tyranny of numbers of publications throughout the world which prevents "proving" a patent is valid. It takes only one publi-

cation, in hand, to prove a patent is invalid but a patent can never be"proved" valid. The most that can be said is, "A publication has not yet been found which invalidates this patent.". The law, 35 U.S.C. § 282, is correctly written. There is no choice other than to presume a patent is valid until it is adjudged invalid.

Kearns read in a law school textbook used at Wayne State University, *Patent Law Fundamentals*, by Peter D. Rosenberg:

> "...the great weight of authority is that a patent is very much a contract. While the words contained within the four corners of letters patent do not themselves explicitly recite the terms of a contract between the sovereign and the patentee, such is implicit from the provisions of the patent statute." *Grant v. Raymond*, 31 U.S. (6 Pet.) 218, 241-42 (1832)."

Kearns complained to then Commissioner of Patents and Trademarks Mossinghoff in a letter dated January 30, 1983. Kearns asked what his legal rights would be if the litigation was not

completed by the time his patents expired. The Commissioner declined to opine Kearns' rights, but wrote:

> "It is not unusual for litigation begun during the 17-year patent term to continue after expiration of the patent."

Kearns complained to others. The Commissioner and Kearns shared a television segment by Danny Noyes of Cable News Network aired on November 25, 1983. On the aired TV segment (at 35 sec. into the program) the Commissioner said:

> "They (the infringers) don't want a law suit any more than the little guy does. It costs them just as much money. They have their resource limitations just like anyone else."

The Commissioner and Kearns continued to exchange letters. The Commissioner and his aide, Mr. D. Hoinkes, had a meeting with Kearns in February, 1984 wherein the Commissioner denied Kearns relief verbally.

Kearns read the annual report of the Patent and Trademark Office. He read and calculated that the U.S. of A. issues 60,000 patents

duced in the appendix hereto starting at 1a. The judgment of the United States Claims Court is reproduced in the appendix starting at 5a.

JURISDICTION

The judgment for which this Court's review is sought was entered on April 26, 1985. This Court has jurisdiction by virtue of 28 U.S.C. § 1254(1).

THE CONSTITUTIONAL PROVISIONS, RULES & STATUTES INVOLVED

U.S. Constitution, Article 1, Section 8, Clauses 1, 8 & 18; Article III, Section 2; & Amendments 1 & 5.

Federal Rules of Civil Procedure, Rules 1, 11 & 16.

Statutes, Title 28 U.S.C. § 1491(a)(1), § 2501, § 2674; Title 35 U.S.C. § 122, § 154, § 281, § 282, § 283; Title 41 U.S.C. § 602(1), § 604, § 605(a), (b) & (c)(5). 88 Stat. 2053.

The pertinent text is reproduced in the appendix starting at 6a.

STATEMENT OF THE CASE

This proceeding was commenced on August 23, 1984 in the U.S. Claims Court on a complaint filed by Robert W. Kearns of Gaithersburg, Maryland against the United States of America in a civil action arising under the U.S. Constitution and its Amendments; Acts of Congress, including the U.S. Patent Laws and a contract as provided by 28 U.S.C. § 1491; under the Declaratory Judgment Act, 28 U.S.C. § 2201 and § 2202; an action to provide a remedy for misrepresentation by officers of the United States of America; and an action to compel an officer of the United States of America to perform his duty under 28 U.S.C. § 1361.

Kearns is a Professional Engineer, a "lone" inventor, a former professor of engineering at Wayne State University in Detroit, Michigan, a manufacturer of controls in a small business which are marketed under an assumed name, Computer Central, and a taxpayer who was awarded

the Doctor of Philosophy in Engineering degree. He holds 32 patents, 25 of which are in intermittent windshield wiper control systems. Kearns can manufacture his patented product without infringing the patents of others. He has yet to receive his first royalty, or, more import to him, to employ many of his "neighbors".

Kearns' complaint was dismissed by the U. S. Claims Court, during the day following the filing.

Kearns appealed to the U.S. Court of Appeals for the Federal Circuit, who affirmed the dismissal of his complaint.

Kearns believes he has raised substantive issues which need to be addressed. In so demonstrating, Kearns asks this Court's indulgence to consider the following history of Kearns' journey with the patent system.

A. The Background Facts.

Kearns conducted experiments on his transsistorized intermittent windshield wiper technology in 1963. Since transistors were not in general use --- even in radios --- at that time Kearns sought environmental and life test specifications to complete his work in the fall of 1963. Since he realized that to develop a complete specification would entail an investment of time and resources by the automotive manufacturers, he demonstrated only the external features of his system to Chief Engineer Neill of the Ford Motor Company so Mr. Neill would see, and thereby know, it was worth the investment. Kearns received preliminary temperature and life test requirements at that meeting.

Kearns discovered how to protect the transistors from the high temperatures expected in June, 1964. He then started a life test of 3,000,000 cycles, which at 2-plus seconds per cycle, took six months. The life test was suc-

cessfully completed on November 16, 1964. Kearns filed for patents in the U.S. Patent Office on December 1, 1964.

Kearns negotiated claims which satisfied him, agreed to disclose his invention to the public and paid his fees to the U.S. of A. and in the process gave up his right to practice his invention in secret. The U.S. of A. issued three patents to Kearns on said application which have the same expiration date:

3,351,836 entitled "Windshield Wiper System with Intermittent Operation"

3,564,374 entitled "Intermittent Control Device"

and,

3,902,106 entitled "Intermittent Windshield Wiper Control Device"

The first was issued on November 7, 1967.

B. Kearns' Connection with Ford.

After patents were applied for, Kearns continued contacts with Ford Motor Co. personnel. Ford was attempting to develop intermittent windshield wiper controls based on bi-metal and

vacuum technologies. In 1966, Kearns was told his transistor technology had won the competition and that it needed to be interfaced with the 1969 model year design, then in progress. He was told the wiper system is a "Federal Safety Item" and for Ford personnel to confirm reliability, he would have to disclose the principles used in his technology. Kearns disclosed the technology and was on the "design team" --- but Kearns was not paid by Ford for these exertions. Rather, the engineers with whom he worked knew Kearns expected a purchase order for the interfaced design at the proper time.

Ford purchased the Philco Corporation in 1967 which employed many electronic manufacturing personnel.

When Kearns did not receive a purchase order for 1969 production, Kearns' patent attorneys asked Ford for drawings of the control to be used so they might evaluate infringement.

Correspondence continued.

Attorneys for Ford raised the defense of patent invalidity by February 18, 1972.

Again, correspondence continued between the attorneys. Kearns had no personal knowledge of the infringement at that time --- just that the attorneys were having "trouble". Subsequent discovery showed that one of the engineers on the "design team" was working on other interface-designs without Kearns' knowledge or permission. One of those designs was in use and manufactured by Ford before Kearns' patent issued, giving a beginning to Kearns' claim that he has not had *even one day* of exclusive right to his invention.

Being a "virgin" inventor, Kearns did not then realize that the patent laws actually reward infringers for delays and procrastination as will be discussed subsequently. Some 39 letters were exchanged. A relatively recent

analysis of the delays involved shows Kearns' attorneys were responsible for about 1-year of delay (an answer in the mail 9 days after receipt of a communication) while Ford's attorneys were responsible for 7-years of delay.

C. Kearns' Connection with Mercedes.

In July, 1976 Kearns' son, Dennis, brought to him a Mercedes intermittent control with the associated wiring diagrams. It was necessary to construct a schematic from the printed circuit assembly. Such a method of construction results in a "messy" drawing --- Kearns never made a "neat" one for years. The invention as depicted in Fig. 2 of Kearns' patents consists of five parts. The Mercedes control utilized the same five parts in the same relative locations. Kearns saw it as a copy! Kearns felt that Mercedes was so powerful --- so arrogant --- and thought of Kearns as a "nothing" --- that they needn't even contact him. Kearns had an emotional breakdown the following month.

Having been discharged from the hospital, Kearns hired an additional litigating patent attorney in November, 1977 and authorized infringement suits which were filed in March,1978.

D. Kearns as Plaintiff in Infringement Civil Actions.

The remedy for infringement is a civil action. 35 U.S.C. § 281.

Kearns has suits pending in the U.S. District Court for the Eastern District of Michigan - Southern Division against the following defendants:

AB-VOLVO;
ALFA ROMEO S.p.A.;
AMERICAN MOTORS CORP.;
AUTOMOBILES-CITROEN S.A.;
B-L, P.L.C.;
BARNETT PONTIAC-DATSUN, INC.;
BAVARIAN MOTOR VILLAGE LTD.;
BAYERISCHE MOTOREN WERKE A.G.;
CHRYSLER CORPORATION;
DAIMLER-BENZ AKTIENGESELLSCHAFT;
DAGLEISH CADILLAC-PEUGEOT;
DR. ING. h.c.f. PORSCHE A.G.;
FALVEY OF TROY;
FERRARI S.p.A.;
FIAT AUTO S.p.A.;
FORD MOTOR COMPANY;
FRED LAVERY PORSCHE AUDI CO.;
FUJI HEAVY INDUSTRIES, LTD.;

GENERAL MOTORS CORP.;
GROSSE POINTE AMC-JEEP RENAULT, INC.;
GROUP LOTUS CARS COMPANY, P.L.C.;
HONDA MOTOR CO., LTD.;
ISUZU MOTORS CO., LTD.:
JOE DWYER SUBARU VOLVO, INC.;
LaFONTAINE TOYOTA;
MITSUBISHI MOTORS CORP.;
NISSAN MOTOR CO., LTD.;
OFFICIENE ALFIERI MASERATI S.p.A.;
PEUGEOT S.A.;
REGIE NATIONALE des USINES RENAULT;
ROLLS ROYCE MOTORS, LTD.;
SAAB-SCANIA AB;
SEAWAY MOTORS, INC.;
SPORTS CAR EXCHANGE, INC.;
TAMAROFF BUICK-DMC-HONDA-ROLLS TOYCE;
TOYO KOGYO COMPANY, LTD.;
TOYOTA MOTOR CO.,LTD.;
VOLKSWAGENWERK, A.G.;
WOOD MOTORS, INC.;
and, AUDI NSU AUTO UNION, A.G..

This case does not directly concern Kearns' remedy under 35 U.S.C. § 281 for the infringement of Kearns' patents by third parties --- except that the U.S. of A. has barred enjoinment of the infringement without prior adjudication and has "processed" the necessary adjudication for over seven years without trial. A paradoxical situation, at best. All defendants are continuing their infringements.

E. Kearns as Defendant in Chalienges to His Patents' Validity.

Kearns is a defendant in a civil action brought under the patent laws and the Declaratory Judgment Act filed on May 17, 1978 by SWF-SPECIALFABRIK fur AUTOZEBEHOR GUSTAV RAU G.m.b.H., a corporation of the Federal Republic of Germany. SWF is a supplier of intermittent windshield wiper systems throughout Europe.

Depositions of SWF managers and engineers taken in Stuttgart, W. Germany during the week of October 18, 1982 revealed that in March,1968 four months after the publication of Kearns' '836 patent, it was circulated among SWF engineers. An early system, SP3-1108, was drawn on October 28, 1968.

SWF indemnified automotive manufacturers against third-party infringement suits as part of their sales contracts.

SWF alleges in their complaint that Kearns' patents are not valid --- but in documents made

available to Kearns, and which are available to this Court through Judge Charles W. Joiner of U.S. District Court for the Eastern District of Michigan, are the following excerpts: (censored by Kearns under order of Judge Pratt)

Dated April 4, 1978:

> "According to our discussion with (censored) the patents under discussion have been examined with the result that a patent infringement does indeed exist. (Censored) too, came to the same conclusion."

Dated April 18, 1978:

> "The firms (censored),(censored) (censored),(censored) and (censored) have examined the Kearns patents and determined that an infringement exists in fact."

A memorandum dated August 30, 1978 is in response to a request for the suppliers to design around the Kearns patents.

> "(Censored) and (censored) take a negative view in regard to an alternate solution because of the simplicity and good performance of the Kearns solution. Further, an alternate solution does not exclude that it may reach into the protected area of the Kearns patents."

Kearns and his son, Dennis, attended the first status conference held in Judge Pratt's chambers with the attorneys. They were shocked to hear SWF's attorney tell Judge Pratt, while looking him straight in the eyes,

> "I don't intend for this case to ever come to trial."

and Judge Pratt said, --- nothing!

Subsequently, Kearns and Dennis were barred by Judge Pratt from attending future status conferences.

(1) Kearns Seeks a Second Time to Enjoin the Infringement of His Patents.

Kearns in asking the Court to enjoin further infringement cited three references applicable to this case:

1) 28 U.S.C. § 282. "A patent shall be presumed valid."

2) To permit Defendants to continue to infringe during the pendency of this suit would, in effect, grant Defendants a free license which would be valid as long as they continue to contest their suit. See *Teledyne Industries, Inc. v. Windmere Products, Inc.*, 433 F. Supp. 710 at 739-740 (S.D. Fla. 1977).

3) The provision in 35 U.S.C. § 154, granting to the patentee the right to exclude others from using his invention is to make it possible for the patentee or a licensee of the patentee to practice the invention exclusively for a limited period of time without competition.[10]

[10] As stated in Study No. 2, *The Patent System and the Modern Economy*, Study of the Subcomm. on Patents, Trademarks and Copyrights of the Senate Comm. on the Judiciary, 84th Cong., 2d Sess. (1957) at p. 5:

"(T)he patent system provides a protected market with the opportunity for unusual profit necessary to justify the heavy investment in time, effort, and capital necessary to bring the improvement to the public. This same protected market provides an entering wedge by which a business enterprise entering a new field can overcome the obstacles that otherwise discourage entry into an industry already populated."

On the enjoinment question, Judge Pratt denied Kearns' request for an evidentiary hearing.

SWF's attorneys argued successfully, that proof via prior adjudication or proof via prior public acquiescence is the standard required

annually, through the labor of 3,295 employees, on which $24,000,000 are collected in fees and taxes annually by the Patent and Trademark Office. There are, on average, 600 challenges annually, involving 900 patents where only *180 of the 60,000* are found not to be invalid!

Kearns' controversy was not with third parties who were infringing his patents, but with the party to his patent contract --- the U.S. of A.

Kearns read Justice Douglas' opinion:

> "But where wrongs to individuals are done by violations of specific guarantees, it is abdication for courts to close their doors." *Flast v. Cohen*, 88 Supreme Court Reporter 1957, 392 U.S. 102.

G. The Claims Court's Disposition of Kearns' Complaint.

The U.S. Claims Court dismissed Kearns' Complaint during the day after it was filed since it was adjudged, "to fall clearly outside the court's jurisdiction".

H. Kearns' Appeal to the U.S. Court of Appeals for the Federal Circuit.

Basically, Kearns presented three legal arguments for jurisdiction by the Claims Court:

1. The "taking" argument.

Elementary is the principle that a patent is property just as is land. *Seymour v. Osborne* 78 U.S. (11 Wall.) 516, 533-34 (1870); *Consolidated Fruit Jar Co. v. Wright*, 94 U.S. 92, 96 (1876) of which an inventor cannot be deprived without affording to him due process of law. To take jurisdiction of suit for compensation for property taken, it is not necessary to find that the government agents were aware that their acts would result in its taking. *Cotton Land Co. v. United States* (1948) 109 Ct Cl 816, 75 F. Supp. 232. Nor do the lands need to be taken completely, it being sufficient that their usefulness is diminished for a temporary period. *Fonaliedas v. United States* (1952) Ct Cl 483, 107 F. Supp. 1019.

Ownership of any form of property carries with it the exclusive right to its enjoyment. That is the essence of property. *Picard v. United Aircraft Corp.*, 128 F.2d 632, 643, 53 U.S.P.Q. 563, 573 (2d Cir. 1942) (Frank J. concurring).

Chief Justice Taney opined:

> "But the discovery (sic discoverer) of a new and useful improvement is nested by law with an inchoate right to the exclusive use which he may perfect and make absolute by proceeding in the manner the law requires." *Gaylor et al v. Wilder*, 54 U.S. (10 How) 477, 13 L. Ed 504 (1850).

In Kearns case, officers-of-the-court debated the validity of Kearns' patents for 13 years and 3 months now without placing the issue before a jury, effectively, not affording Kearns due process of law. Documents *supra* written by the defendants and plaintiffs, which are before the court, state "infringement does indeed exist". Other documents before the court show continuous infringement from before the

patent was published until its routine expiration date with the result the U.S. of A. did not "secure" for Kearns *even one day* of exclusive use nor did the U.S. of A. exclude others from making, using or selling his invention during the 17-year time period. The U.S. of A. conducted itself so as to allow others to use and enjoy Kearns' property; rewards them for doing so; and on a routine date takes the now tainted property (which it can't even decide if it is valid) given in consideration of the contract back from Kearns and gives it to all of the public. Amendment 5 of the Constitution mandates Kearns be given just compensation.

The Claims Court has jurisdiction of "taking" cases. To qualify, such a case need be only arguable and not frivolous. *Rolston Steel Corp. v. U.S.*, 340 F.2d 663, 667, 169 Ct Cl 119, 125 (1965), cert. denied,381 U.S.950 85 S. Ct. 1803.

2. The breach-of-contract argument.

> "... the great weight of authority is that a patent is very much a contract." *Patent Law Fundamentals*, Peter D. Rosenberg, *supra*.

The consideration or quid pro quo, *Flick-Reedy Corp. v. Hydro-Line Mfg. Co.*, 351 F.2d 546, 551, 146 U.S.P.Q. 694, 697 (7th Cir.1965) which is given to the public is the disclosure of a theretofore unknown invention and a fee is paid.

Since the patent right doesn't exist in the common law, it is an instrument of government. It is the reward stipulated for the advantages derived by the public for the exertions of the individual and is intended to be a stimulus to those exertions. *Grant v. Raymond*, *supra* Kearns can look to no one but the U.S. of A. to "secure" the constitutionally-mandated standard of consideration due him (Article I, Section 8, Clause 8). The Congress of the U.S. of A. was delegated the task of filling in the myriad of

details necessary for the establishment and maintenance of an orderly system of recognizing and protecting rights in patents, and the Judiciary of the U.S. of A. was delegated the judicial power which extends to all cases, in law and equity, arising under the Constitution and the laws of the U.S. of A. Article III, Section 2.

Breach-of-contract is not a tort.

If contractual relations exist, the fact that the alleged breach is also tortious does not foreclose jurisdiction. *Fountain v. United States* (1970) 192 Ct Cl 495, 427 F.2d 759, cert. den. 404 U.S. 839, 30 L.Ed 2d 73, 92 S. Ct. 131.

The U.S. Claims Court has jurisdiction of

> "...any express or implied contract with the United States, ... in cases not sounding in tort." 28 U.S.C. §1491

3. The Kearns-as-taxpayer argument.

Kearns alleged in his Complaint that his tax money was being extracted and spent in violation of specific constitutional protections against abuse of legislative power. The patent laws as written and practiced are simply not "securing" the constitutionally mandated consideration due Kearns in the face of commonly known infringement defensive strategies and tactics.

Chief Judge Howard T. Markey addressed this point in his speech "Some Patent Problems" 80 FRD 210:

> "Another complaint is shotgun pleadings. There are 23 defenses to a patent infringement suit and every patent attorney has them in a drawer. I know. I was there. He pulls them out and changes the title on the case and files it. Counterclaims for antitrust, fraud in the Patent Office, every known defense will appear in the answer. Much of that will still be in the pleadings at the end of trial, though not one word was said at trial about some defenses ..."

Kearns' injury is appropriate for judicial re-

dress, and Kearns has established the necessary nexus between his status and the nature of the allegedly unconstitutional action to support his claim of standing to secure judicial review. *Flast v. Cohen supra.*

I. The Federal Circuit's Disposition of Kearns' Appeal.

1. A patent is not a contract

At the oral hearing on April 2, 1985 at 3 minutes 40 seconds:

Kearns: "The U.S. reniged on the contract they had with me."

Sr. Judge Skelton: "What contract is that?"

Kearns: "It is .. a patent as issued by"

Sr. Judge Skelton: "That's not a contract with the U.S. It is a property -- It is an indication of property."

Kearns: "There is consideration on both parts. And the Supreme Court in Grant v. Raymond, they referred to it as a contract."

2. Take your complaint to Congress.

At 5 minutes into Kearns' oral argument:

Kearns: "I have conducted myself in the way the law requires. I have hired officers-of-the-court. For 13 years and 2 months they have been considering the validity of my patent. I think that through that process they are making a mockery out of the patent laws, and I think that is under your jurisdiction."

Judge Davis: "If you think a mockery is being made out of the patent laws, why didn't you go to the appropriate committees of Congress and tell them and say, "there ought to be something done about this"."

Kearns: "Well, that sounds so nice, and"

Judge Davis: "It is much more reasonable than going to the Claims Court."

Kearns" "I don't agree. I think I am in the correct channel."

3. Decision and opinion.

The dismissal of Kearns' Complaint for lack of jurisdiction was affirmed.

LEGAL ARGUMENTS & QUESTIONS

Kearns is not petitioning this Court to whine or simply record his frustration with the patent system. Kearns' petition identifies constitutional flaws in the patent laws and practices which allow legal defenses against patent infringement to be so effective, the patent laws then provide "inadequate or non-existant (see page) patent protection.

A. Is a patent a contract?

In *Grant v. Raymond*, 31 U.S., 217, 240, 8 L. Ed. 376 (1832) the Supreme Court said:

> "... and it cannot be doubted that the settled purpose of the United States has ever been, and continues to be, to confer on the authors of useful inventions an exclusive right in their inventions for the time mentioned in their patent. ... The laws which are passed to give effect to this purpose ought, we think, to be construed in the spirit in which they have been made; and to execute the *contract* fairly on the part of the United States, where the full benefit has been actually received, if this can be done without transcending the intention of the statute, or countenancing acts which are fraudulent or may prove mischievous.

> The public yields nothing which it has not agreed to yield; it receives all which it has *contracted* to receive. ... That sense of justice and of right which all feel, pleads strongly against depriving the inventor of the compensation thus solemnly promised, ... (emphasis added)."

Law school textbooks cite the above case when stating:

> "... the great weight of authority is that a patent is very much a contract."

The Commissioner of Patents and Trademarks signs the patent itself which contains these words:

> "has hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed" "in testimony whereof" "the various requirements of Law in such cases made and provided have been complied with" "and Whereas, upon due examination made, the said Claimant is adjudged to be entitled to a patent under the Law."

Additionally, the Commissioner of Patents and Trademarks certainly makes determinations and findings with respect to patents. For example see, 35 U.S.C. § 122 and 41 U.S.C. § 602 (1).

Kearns has neither pleaded nor orally urged that the contractual obligation on the part of the government is " to assure that the patent owner will profit monetarily" as the Federal Circuit opines. Rather Kearns says the contractual obligation on the part of the government is to "exclude others from making, using or selling" his invention. 35 U.S.C. § 154.

But the Federal Circuit's Sr. Judge Skelton says, "That's (a patents) not a contract with the United States". The Federal Circuit's Opinion states, "There is simply no contract here cognizable under the Contract Disputes Act and the Commissioner of Patents and Trademarks is not a Contracting Officer under the Act."

B. When is the constitutional command to "secure" met?

The inventor's remedy for infringement is a civil action in which defenses are allowed. 35 U.S.C. § 281. A civil action requires the use of the judiciary and the Federal Rules of

Civil Procedure.

The constitution says, "to promote science and the useful arts" the U.S. of A. is to "secure" the "exclusive right" for "limited times" (Article I, Section 8, Clause 8) and "the judicial power shall extend to all cases, in law and equity, arising under the constitution" (Article III, Section 2).

Kearns says, the judicial power to "exclude others" is a necessary part of the patent agreement.

The Federal Circuit opines, "The constit- command to "assure" is met when the patent evidencing a right to exclude is granted." saying, as Kearns understands it, the U.S. of A. has fulfilled its complete constitutional command, the first day of the "limited time" with no obligation beyond the first day.

C. How is the inventor's consideration effected by the judicial process?

The law states, "A patent shall be pre-

sumed valid.". 35 U.S.C. § 282. Kearns makes the point herein on pp 27-28, that due to a tyranny of numbers of publications there is no choice but to "presume" a patent is valid since it can't be proved valid. Whether the public "wins" or "loses" the validity challenge, the public "wins" since it's consideration is preserved through the publication of the inventor's work, while, even when the inventor ultimately "wins" the challenge, the inventor actually "loses", since his consideration of "exclusive right" is lost from the time the validity is challenged until re-affirmed. Additionally, the inventor has to defend,at his own expense, repeatedly and forever, or lose his patent rights by default. *Illinois Tool Works v. Foster Grant Co.*, 547 F.2d 1300, 1303, 192 U.S. P.Q. 365, 367 (7th Cir. 1976).

Kearns as an inventor, is entitled to an injunction

> "in accordance with the principles of equity to prevent the violation of

any right secured by patent."
35 U.S.C. § 283.

"Any right" includes

"the right to exclude others from making, using or selling the invention in the United States"
"for the term of seventeen years".
35 U.S.C. § 154.

Delay of adjudication serves to extend the bar to injunctive relief --- delay through the routine expiration date of the patent being the prime goal.

The Federal Circuit opines, "Nor does it (the patent) create an obligation of the government to enforce the patent right represented by the patent. Enforcement is left to the patent owner ..."

D. Is the U.S. of A. itself subject to the constitutional standard of consideration due the inventor?

The U.S. of A. uses Kearns' tax money to write laws (28 U.S.C. § 1498) which substitute a remedy for the U.S. of A's infringement available only through litigation for the inventor's

constitutional-standard right to exclude others from making, using or selling his patented item. 35 U.S.C. § 154; Article I, Section 8, Clause 8 & 18.

The U.S. of A. uses Kearns' tax money to write laws which eliminate the inventor from supplying his invention to the U.S. of A., *even when he is fully competitive*, because by law the U.S. of A. must buy from the lowest bidder and the inventor can't recover his development costs when competing with infringers.

E. What standard of validity does an inventor need to establish for an entry of an injunction?

Congress legislated that "the principles of equity" be applied to an injunction "to prevent the violation of any right secured by patent" 35 U.S.C. § 283.

The District Court in Kearns' infringement civil action substituted requiring "prior adjudication or prior public acquiescense" citing

Mayview Corp. v. Rodstein, 480 F.2d 714 (9th Cir. 1973); *Eli Lilly and Company, Inc. v. Generix Drug Sales, Inc.*, 460 F.2d 1096 (5th Cir. 1972) among others, which rewards delays and leads to the paradox described herein.

Not to "presume validity" and not to "adjudicate challenges to validity" is not to comply with the law, in Kearns' view. On the other hand, while sympathizing with "applicants ... litigation delays" seems to excuse them by opining, "but nothing in the Constitution or in any statute precludes a patent owner's fellow citizen's from challenging the propriety of a patent grant".

Kearns was denied an injunction without an evidentiary hearing in which to defend the challenge to his patent's validity.

F. Since an inventor's common law right to practice his invention in secret cannot be restored after the issuance of his patent, how harmed is he by the court's entertainment of a post-issue-date challenge to the validity of his patent?

One of the tests for an injunction is irreparable injury. *Teledyne Industries, Inc. v. Windmere Products, Inc.*, 433 F. Supp. 710, 713 (S.C. Fla. 1977). Kearns' incentive to enter into the patent agreement was to obtain

(1) a protected market,

and, (2) an entering wedge to a market already populated.

But in agreeing to accept a patent, Kearns gave up his common law right to practice his invention in secret. Later Kearns learned, that while the patent office had kept his application for patent confidential to preserve his common law rights, 35 U.S.C. § 122, the judiciary ruled, seemingly unconcerned about Kearns' common law rights:

> "... the issuance of letters patent is merely prima facie evidence of patentability, and final determination of patentability must await adjudication of court in which patentability is properly challenged." *Quaken State Oil Refining Co. v. Talbot*, 185A 526, 322 Pa. 155.

This post-issue-date challenge condemns Kearns

to defend his patent, repeatedly and forever, at great expense or lose his patent by default. *Illinois Tool Works v. Foster Grant Co.*, 547 F.2d 1300, 1303, 192 U.S.P.Q. 365, 367 (7th Cir. 1976).

G. Did not the Court of Appeals for the Federal Circuit err in affirming the dismissal of Kearns' complaint by the Claims Court?

The jurisdiction of the Claims Court includes "taking" cases founded upon the Constitution. 28 U.S.C. § 1491. See the "taking" argument, *supra* p. 31. To qualify, such a case need by only arguable and not frivolous.

The jurisdiction of the Claims Court includes "any express or implied contract with the United States" 28 U.S.C. § 1491. See the breach-of-contract argument, *supra* p. 34.

The jurisdiction of the Claims Court includes "any Act of Congress". 28 U.S.C. § 1491 See the Kearns-as-taxpayer argument, *supra* p 36.

The inventor's consideration is the only

benefit granted by the un-amended constitution which sets a time limit on a right granted (except the return of bills by the President to Congress within ten days (Article I, Section 7, Clause 2)). This Court has the power and duty to supervise its lower courts and its officers. Its rules 1, 11 and 16 of the Federal Rules of Civil Procedure acknowledge that time is subject to supervision.

And then there is Justice Douglas' opinion:

> "But where wrongs to individuals are done by violations of specific guarantees, it is abdication for courts to close their doors." *Flast v. Cohen*, 88 Supreme Court Reporter 1957, 392 U.S. 102.

REASONS FOR GRANTING THE WRIT

A. The U.S. of A. Stands to be the Greater Benefactor from a Result Favoring Kearns.

While Kearns is the plaintiff-petitioner and the U.S. of A. is the defendant-respondent the U.S. of A. stands to be the greater benefactor from a result favoring Kearns.

In its recently published report, January 11, 1985, the knowledgeable and prestigious President's Commission on Industrial Competitiveness made noteworthy and significant findings:

1. Page 340, line 20

> "The developed world's stake in protecting intellectual property is growing. Its competitive edge in the international marketplace is, increasingly, its technological edge."

2. Page 340, line 40

> "The United States, of all the developed countries, has the greatest stake in improving the international protection of intellectual property. *Its efforts to protect the intellectual property of its citizens* could set the course for the developed world to follow (emphasis added).

3. Page 322, line 31

"...it should be recognized that if the investment in innovation is to be encouraged, confidence in the patent system must be maintained by assuring the *validity* of issued patents (emphasis added)."

4. Page 337, line 35

"Innovators must have the unqualified right to produce and market their own inventions if they are to be able to continue to innovate and contribute to technological advances."

5. Page 91, line 18

"Increasingly American firms are being denied the benefits of their own inventions."

6. Page 91, line 14

"To an alarming degree, intellectual property rights have already begun to erode. This is a result of problems that include *inadequate* or *non-existant patent protection*, rampant commercial *counterfeiting*.. (emphasis added)."

7. Page 330, line 1

In like circumstances as Kearns, the United States of America itself, supported by other industrialized countries, has opposed like injustices by arguing

"expropriation of private property without due compensation".

8. Page 319, line 41 under Inadequacy of Infringement Actions

To whom does the Presidential Commission turn to for relief? ... to the same Court as Kearns does. And for relief from what? ...circumstances under which a preliminary injunction may be obtained ... and to eliminate unreasonable limitations to judicial remedies ... just as Kearns does.

"The recently created Court of Appeals for the Federal Circuit *may clarify* the circumstances under which a preliminary injunction may be obtained by the patent holder *and eliminate* unreasonable limitations to judicial remedies. In the mean time, the enforcement of American intellectual property laws through infringement actions *as they now exist* will continue to limit the ability of innovators to recover the costs of innovation and to engage in new research.(emphasis added)."

B. The Practice of the Patent Law has Far Departed from the Plain Meaning of the Constitutional Command to "Secure" and from the Constitutional Standard of Consideration to the Inventor.

The practice of the patent law has far departed from the plain meaning of the constitutional command to "secure" and from the constitutional standard of consideration to the inven-

tor, as to call for an exercise of this Court's power of supervision.

Inventors can and do read the constitution. The U.S. of A. can't afford to lose inventors, nor the diversion of inventor's time, talents and resources to the legal arena.

C. This Court Needs to Set the Course.

This Court should settle the questions Kearns asks. The world is watching to see if the U.S. of A. will secure for Kearns, one of its own citizens, the constitutional standard of consideration.

D. Better to Put Your Own House in Order First

This Court's right and duty of "judicial review" must be exercised when the patent laws are no longer working. The knowledgeable President's Commission on Industrial Competitiveness characterizes the patent system as providing *inadequate* or *non-existant* protection. What stronger words can they use?

Kearns should not be sent to Congress as

Judge Davis opines. A logical first step is to get its inferior courts and their judicially constructed laws in order. A second step, if found necessary, is to declare certain laws of Congress as no longer being constitutional to secure the constitutionally mandated consideration to Kearns. The inferior courts are responsible for edging the standard ever higher so adjudication is now required before they will exclude others, 35 U.S.C. § 283 leading to a catch-22 paradox; rewards infringers who shut the inventor out of the market; and rewards those who practice judical delay and obfuscation. A hearing of Kearns' complaint is the vehicle.

E. Professors Who Teach America's Technologically-Oriented Youth Have a Duty to Promote Science and the Useful Arts, Too.

Kearns, and his professorial colleagues around the nation, are not training, developing and stimulating America's technologically-oriented youth to be fodder for the judicial grist mill as Kearns has experienced it. Kearns

must be true to his profession too. He believes this Court and this nation would profit from an exercise of this Court's power of supervision over its patent laws and its officers-of-the-court.

CONCLUSION

Kearns' personal experience as reflected in his complaint to the U.S.Claims Court stands in bold contrast to the consideration due him under the plain meaning of the words the framers of the constitution chose to express that consideration. That the Court's attention is overdue to a case like Kearns' is supported by the Presidential Commission's findings ... with the U.S. of A. standing to be the greater benefactor. Petitioner Kearns prays, most respectfully, that the writ of certiorari issue.

Respectfully sugmitted,

Robert W. Kearns, *Pro Se*
9725 Lookout Place
Gaithersburg, Maryland
(301) 926-1904

Note: This opinion will not be published in a printed volume because it does not add significantly to the body of law and is not of wide spread legal interest. It is a public record. It is not citable as precedent. The decision will appear in tables published periodically.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

ROBERT W. KEARNS,	)	
	)	
Appellant,	)	
	)	
v.	)	Appeal No.
	)	85-645
THE UNITED STATES,	)	

Appellee.

DECIDED: April 26, 1985

MARKEY, Chief Judge, DAVIS, Circuit Judge, and SKELTON, Senior Circuit Judge

PER CURIAM.

DECISION

Appeal from an Order of the Claims Court dismissing Mr. Kearns' complaint for lack of jurisdiction. We affirm.

OPINION

The Claims Court has no jurisdiction to extend or enjoin the expiration of any patent;

there is no government contract over which the Claims Court could exercise jurisdiction in this case; and the Claims Court has no jurisdiction over any tort claim.

Congress alone has the power to extend the patent term. See Agawam v. Jordan, 74 U.S. (7 Wall) 583, 594, 608 (1869).

The disclosure in a patent application and consequent issuance of a patent does not create a contractual obligation on the part of the government to assure that the patent owner will profit monetarily. Nor does it create an obligation of the government to enforce the patent right represented by the patent. Enforcement is left to the patent owner, who, in this case, is and has been employing the courts for that very purpose. 35 U.S.C. § 271. The constitutional command to "assure" is met when the patent evidencing a right to exclude is granted. Applicant's apparent frustration with litigation delays and with what he views as the

failure of others to honor his patents is understandable, but nothing in the Constitution or in any statute precludes a patent owner's fellow citizens from challenging the propriety of the patent grant. The actions of federal courts in respect of Kearns' patent litigation do not constitute a "taking" of his property rights by the United States under the Just Compensation clause. There is simply no contract here cognizable under the Contract Disputes Act, and the Commissioner of Patents and Trademarks is not a Contracting Officer under the Act. Hence the claim founded on breach of contract is without foundation, and clearly outside the jurisdiction of the Claims Court.

The claim for misrepresentation is equally unfounded and equally beyond the jurisdiction of the Claims Court, which has no jurisdiction over tort claims. Eastport Steamship Corp. v. United States, 372 F.2d 1002, 1010 (Ct. C11967)

Accordingly, the dismissal of the complaint by the Claims Court for lack of jurisdiction must be and is hereby affirmed.

IN THE UNITED STATES CLAIMS COURT

No. 436-84C

ROBERT W. KEARNS,

V.

THE UNITED STATES

JUDGMENT

Filed AUG 24 1984

Pursuant to the order of August 24, 1984, it was held that plaintiff's complaint is to be dismissed, as it falls clearly outside the court's jurisdiction.

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that the complaint is dismissed, for lack of jurisdiction.

Frank T. Peartree

Clerk of Court

AUG 24 1984

By: Debra L. Samler
Deputy Clerk

NOTE: As to appeal, 60 days from this date, see FRAP 4(a)

THE CONSTITUTIONAL PROVISIONS

Article 1, Section 8,

The Congress shall have the power:

(1) To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States;..

(8) To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

(18) To make all laws which shall be necessary and proper for carrying into execution the foregoing powers.

Article III, Section 2,

(1) The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and ...

Amendment 1

> Congress shall make no law ... prohibiting...the right of the people... to petition the Government for a redress of grievances.

Amendment 5

> No person shall...be deprived of ... property, without due process of law; nor shall private property be taken for public use, without just compensation.

FEDERAL RULES OF CIVIL PROCEDURE

Rule 1 Scope of Rules

They shall be construed to secure the just speedy, and inexpensive determination of every action.

Rule 11 Signing of Pleadings

The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

Rule 16 Pre-Trial Procedure; Formulating Issues

The court shall make an order ...and such order when entered controls the subsequent course of the action,...

STATUTES

Title 28 - Judiciary and Judicial Procedure

§1491 Claims against the United States generally;...

(a)(1) The United States Claims Court shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress,...upon any express or implied contract with the United States,... in cases not sounding in tort.

§2501 Time for filing suit

Every claim of which the United States Claims Court has jurisdiction shall be barred unless the petition is filed within six years after such claim first accrues.

§2674 Liability of United States

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

Title 35 - Patents

§102. Conditions for patentability; novelty and loss of right to patent

A person shall be entitled to a patent unless-

(b) the invention was patented or described in a printed publication in this or a foreign country ...more than one year prior to the date of the application for patent in the United States ...

§281. Remedy for infringement of patent

A patentee shall have remedy by civil action for infringement of his patent.

§282. Presumption of validity

A patent shall be presumed valid.

§154. Content and term of patent

Every patent shall ... grant to the patentee ... for the term of seventeen years ... the right to exclude others from making, using or selling the invention throughout the United States.

§283. Injunction

The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.

Title 41 - Public Contracts

§602 (1) Contracting Officer

means any person who, by appointment in accordance with applicable regulations has the authority to enter into and administer contracts and make determinations and findings with respect thereto.

Contractor

means a party to a Government contract other than the government.

§604 Fraudulent claims

If a contractor is unable to support any part of his claim and it is determined that such inability is attributable to misrepresentation of fact or fraud on the part of the contractor, he shall be liable to the Government for an amount equal to such unsupported part

of the claim in addition to all costs to the Government attributable to the cost of reviewing said part of his claim.

§605 Decision by contracting officer

(a) Contractor claims

All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision.

(b) Review,

The contracting officer's decision on the claim shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency, unless an appeal or suit is timely commenced as authorized by this chapter.

(c)(5) Presumption

Any failure by the contracting officer to issue a decision on a contract claim within the period required will be deemed to be a decision by the contracting officer denying the claim and wil authorize the commencement of the appeal or suit on the claim as otherwise provided in this chapter.

U.S. International Trade Commission
Pub. Law 93-618 (88 Stat 2053)

Chapter 4 - Unfair Import Practices

§341 Amendment to Section 337 of the Tariff Act of 1930.

(a) Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) is amended to read as follows:

§337 Unfair Practice in Import Trade

(a) Unfair Methods of Competition Declared Unlawful.

Unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States, are declared unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provisions of law, as provided in this section.